

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JULIE DALESSIO, an individual,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON,

Defendant.

No. 2:17-cv-00642-MJP

DECLARATION OF
JAYNE L. FREEMAN IN SUPPORT
OF DEFENDANT'S OPPOSITION TO
PLAINTIFF' MOTION TO AMEND
COMPLAINT

I, Jayne L. Freeman, declare as follows:

1. I am the Special Assistant Attorney General representing the Defendant University of Washington in this lawsuit. I make this declaration based upon my own personal knowledge, upon facts which are admissible in evidence. I am competent to testify to the matters set forth in this declaration.

2. The primary focus of Ms. Dalessio's initial Complaint filed in King County Superior Court were allegations that the University allegedly violated Washington's Public Records Act, RCW Ch. 42.56 in various ways, either by failing to redact all information she felt should be redacted, not notifying her prior to releasing any responsive records, and failing to destroy old personnel records; she claimed the same also violated some federally-protected rights, referencing various federal statutes. *See*, Dkt. #1-1. The Complaint also appeared to attempt to revive old discrimination and/or retaliation claims relating to her employment at the University that ended in 2003 pursuant to a settlement agreement and

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1 release.

2 3. Given that RCW 42.56.060 provides immunity from suit for public agencies
3 or employees who “act[ed] in good faith in attempting to comply with the provisions of this
4 chapter,” and the federal claims she alleged appeared to either not state a claim upon which
5 relief could be granted or were barred by the statute of limitations. I filed a motion for
6 summary judgment on behalf of the Defendant University on Thursday, August 24, 2017
7 seeking dismissal of Plaintiff’s state law claims based on this immunity, and of her federal
8 law claims based on failure to state any actionable claims. *See*, Dkt. #27.

9 4. To establish for the court on summary judgment that the Defendant
10 University met the statutory “good faith” standard established by the PRA, thereby
11 warranting dismissal of these claims, it was necessary to provide the record of how the
12 underlying public records request (PR-15-570) and response was handled, and the lengths
13 to which the Office of Public Records staff went to carefully evaluate, redact, and withhold
14 certain documents or portions of documents as deemed appropriate before releasing
15 responsive documents to the requester.

16 5. The Declaration of Alison Swenson, Dkt. #30, was filed with copies of
17 documents demonstrating the process of searching for and collecting records from various
18 University departments, of the records she had redacted and withheld as exempt, and copies
19 of the heavily-redacted records that were produced in response to the PRA request.
20 Dkt. ##30-1 through #30-9. The fact that Ms. Swenson made 478 redactions—many
21 obvious redactions of Dalessio’s SSN—was material evidence necessary to demonstrate the
22 University met this good faith standard to defend against the Plaintiff’s state law claims.
23 Dkt. ##30-1, 30-2.

24 6. The University does not dispute that Ms. Swenson accidentally missed
25 redacting Plaintiff’s SSN in on one page among 370 that were released. When my office
26 filed Dkt. #30-1 and #30-2, we further redacted Plaintiff’s SSN in this location in
27 compliance with LCR 5.2. Dkt. #30-1, p. 114 (*See also*, Dkt. #33, p. 47).

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1 7. On Sunday, August 27, 2017, at 11:52 a.m., Plaintiff sent an email to court
2 staff stating that Dkt. #30-1 and #30-2 were filed with unredacted copies of “personal,
3 confidential, and statutorily exempt information including my date of birth, personal uw
4 student/alumni email, health information etc” [sic]. She copied me and my office on the
5 email. **See, Ex. A.**

6 8. On Monday, August 28, 2017, at 10:00 a.m., the courtroom deputy notified
7 the parties the exhibits appeared to comport with e-filing requirements for the most part but
8 that they discovered one exhibit contained information that should be redacted, so they
9 would be sealed immediately. The deputy directed Defendant to re-file the exhibit with
10 appropriate redactions. **See, Ex. B.**

11 9. Thereafter, upon further review, my office located three instances where it
12 appeared we had missed redacting Plaintiff’s date of birth in the court filings. Dkt. #30-1,
13 pp. 76, 77, and Dkt. #30-2, p. 190. This was an inadvertent administrative error, and not in
14 any way intentional. We promptly re-redacted these dates of birth in Dkt. #33, p. 9-10 and
15 Dkt. #34, p. 165 and notified Plaintiff we were doing so.

16 10. During this review, we were unable to locate any pages where a legible copy
17 of Plaintiff’s Social Security Number (SSN) appeared in the court filings. We did locate
18 instances where, to the casual observer, it might *appear* that a box on an old form contained
19 a social security number, but in actuality they did not. For example, some boxes on old
20 forms are labeled “SSN” but then clearly state it was actually an old Employee I.D. number
21 (“EID”). The numbers do not contain her SSN, and in fact are a completely different
22 numerical format than any Social Security Number (XXX-XXX-XXX vs. XXX-XX-
23 XXXX). [Dkt. # 30-2, pp. 41, 44, 45]. Out of an abundance of caution and to avoid the
24 possibility of additional misinterpretation of these numbers on cursory review, our office
25 also redacted them in Dkts. ## 32, 33, and 34—even though they are not actually SSNs.
26 *See*, Dkt. #34, pp. 16, 19, 20.

1 11. The only other example we found related to social security numbers was a
2 box labeled “SSN” but with the content so illegible it cannot be deciphered [Dkt. # 30-2, p.
3 187]. We also redacted that box in the second filing to avoid any possible misinterpretation.
4 [Dkt. # 34, p. 162].

5 12. Prior to re-filing the further redacted declaration exhibits as Dkt. ## 32, 33,
6 and 34 on September 1, 2017, my office advised Plaintiff of the only pages where we could
7 find unredacted dates of birth, and asked Plaintiff to let us know if or where she thought
8 additional locations where her date of birth or SSN was not properly redacted. We also
9 advised her that we did not have any opposition to the pleadings remaining sealed if the
10 court would allow it. *See, Ex. B.* She did not identify any other locations where such data
11 appeared, but asked that we file the re-redacted documents under seal in their entirety and
12 stipulate to allow her to file additional documents that she apparently planned to file under
13 seal in the future.

14 13. As counsel for Defendant, I did not believe I could affirmatively file a
15 motion to seal the documents that the University had already determined were subject to
16 public disclosure (with appropriate redactions and withheld documents per PRA
17 exemptions) without taking a position contrary to the interest of my client (and that did not
18 appear to be established by law). With the location where University staff accidentally
19 missed redacting Plaintiff’s SSN “over-redacted” in our initial filings (Dkt. ## 30-1, 30-2)
20 and dates of birth additionally redacted in Dkt. ## 32, 33, 34) pursuant to LCR 5, did not
21 believe I could certify “a specific statement of the applicable legal standard and the reasons
22 for keeping a document under seal” as required by LCR 5.2(g)(3)(A) and (B). It appears to
23 me that the requirement that counsel or the party provide such a personal certification is
24 required whether the attorney or party moves to seal a document or “even if it is a stipulated
25 motion....”. *See, LCR 5.2(g)(3).* Thus, while I could, and did, advise Ms. Dalessio that
26 Defendant would not *actively oppose* sealing documents or leaving them under seal, I did
27 not believe I could not fulfill my obligations to my client in this action by requesting or

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1 stipulating to sealing all the documents she wanted sealed.

2 14. On September 5, 2017, Ms. Dalessio formally filed a motion to seal all the
3 “public disclosure” exhibits in their entirety, even with redactions. Dkt. # 36. In response to
4 the motion (and in previous emails with Ms. Dalessio), I again made it clear that the
5 University did not *oppose* any of these documents being sealed or remaining under seal;
6 however, I could not affirmatively make the *request/motion* or *stipulate* to sealing them on
7 behalf of the University for the foregoing reasons. She did not identify any location where
8 she believed an SSN or birthdate remained unredacted.

9 15. On October 26, 2017, this court issued an Order sealing Dkt. ## 30-1, 30-2
10 (these had already been sealed by previous orders: Dkt. #31 on 8/28/17 and Notice of
11 docket text modification issued 9/5/17), ##32, 33, 34, (the re-redacted versions of 30-1 and
12 30-2), and ##37-1 through 37-7 (new documents Ms. Dalessio chose to file “under seal”—
13 these were the unredacted and unreleased documents UW produced only directly to
14 Ms. Dalessio herself in response to the PR-2016-760 for University records related to her
15 and her prior employment, they were never released publicly) without ruling or comment as
16 to why. As far as I know, the documents remain under seal in the court file.

17 16. Ms. Dalessio filed a timely response to the University’s summary judgment
18 motion. Dkt. ## 42-43.

19 17. On February 12, 2018, Mr. Thomas advised us, via email, that Plaintiff may
20 be adding new parties to the lawsuit and adding claims based on alleged “intervening
21 facts.” The next day, he advised us that some new claims would be based on filing
22 Plaintiff’s “social security number” and “date of birth” in the PACER system (back in
23 August 2017), citing LRC 5.2 and *In Re: Crawford*, 194 F.3d. 954, 958 (9th Cir. 1999).

24 18. On February 20, 2018, counsel for the parties filed an amended joint status
25 report (Dkt. #69). Defendant indicated it would oppose attempts to add new claims or
26 parties as untimely and unsupported by facts or law.

27 19. On February 23, 2018, the parties conferenced with Judge Pechman at her
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1 request. Plaintiff's counsel again indicated an intent to seek leave to amend Plaintiff's
2 complaint to add new parties and potentially add new claims, though indicated an Amended
3 Complaint would primarily "clarify" Plaintiff's claims.

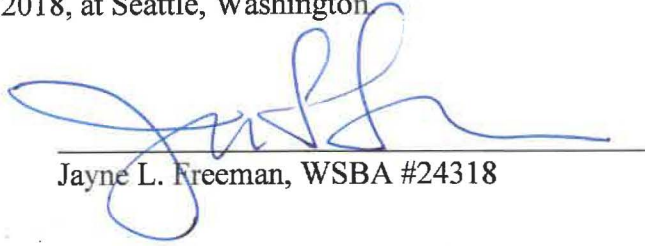
4 20. Throughout our communications with Mr. Thomas, counsel for both parties
5 communicated requests to trade information about legal authority supporting or
6 contradicting such claims. *See, e.g. Ex. C.* I do not think Mr. Thomas specified that
7 Plaintiff intended to seek to name me, an associate attorney in my office, and my legal
8 assistant as Defendants—this was not apparent until we received Plaintiff's motion when it
9 was filed in court. *See, Dkt. #74-1.*

10 21. During our communications with Mr. Thomas, it sounded like he may not
11 have been in possession of copies of all the pleadings and discovery that had been filed and
12 served throughout the litigation. At time, he indicated he either did not have or had not had
13 an opportunity to review key documents. Thus, we provided additional copies at times—
14 such as the summary judgment declarations so he could be aware of the evidence material
15 to the claims and issues in the pending summary judgment motion as well as for
16 consideration of any potential motion to amend Plaintiff's Complaint—and finally in March
17 2018, we downloaded copies of all of the pleadings and discovery from the case to a thumb
18 drive and mailed it to him for his reference.

19 22. The underlying facts regarding the public disclosure requests to the
20 University and circumstances surrounding the responses have not changed since the case
21 was filed, and Plaintiff, her new attorney, and the court have sufficient information in the
22 court file to determine the merit of Plaintiff's original claims and futility of Plaintiff's
23 proposed claims.

24 I declare under penalty of perjury under the laws of the State of Washington that the
25 foregoing is true and correct to the best of my knowledge.
26
27

DATED this 26th day of March, 2018, at Seattle, Washington



Jayne L. Freeman, WSBA #24318

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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Plaintiff

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DATED: March 26, 2018

/s/Jayne L. Freeman

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